



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF V-I-, INC.

DATE: AUG. 3, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a provider of software design, development, and consulting services, seeks to permanently employ the Beneficiary as a software engineer (jr.). It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

After approving the petition on August 27, 2008, the Director, Texas Service Center, revoked the petition's approval on July 29, 2014. *See* section 205 of the Act, 8 U.S.C. § 1155 (authorizing U.S. Citizenship and Immigration Services (USCIS) to revoke a petition's approval "at any time" for "good and sufficient cause"). The Director found that the record did not establish the Petitioner's ability to pay the proffered wage or the *bona fides* of the job offer. We dismissed the appeal from the revocation decision and affirmed the Director's decision that the record at the time of the petition's approval did not establish the Petitioner's ability to pay the proffered wage.

On December 9, 2015, we denied the Petitioner's motions to reopen and reconsider. We found that the record on motion did not establish the Petitioner's ability to pay or the Beneficiary's qualifications for the offered position.

The matter is now before us again on motions to reopen and reconsider. The Petitioner asserts that it need not demonstrate its ability to pay multiple beneficiaries and submits additional evidence in support of the Beneficiary's qualifications for the offered position. We will deny both the motion to reopen and the motion to reconsider.

**I. THE PETITIONER'S ABILITY TO PAY THE PROFFERED WAGE**

A petitioner must demonstrate its continuing ability to pay a proffered wage from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal income tax returns, or audited financial statements. *Id.*

In the instant case, an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL), accompanies the petition. The petition's priority date is June 25, 2007, the date the DOL accepted the labor certification application for processing. See 8 C.F.R. § 204.5(d). The labor certification states the proffered wage of the offered position of software engineer (jr.) as \$65,000 to \$84,667 per year.

An employer may state a proffered wage as a range if the range's bottom amount equals or exceeds the prevailing wage rate. See U.S. Dep't of Labor, Final Rule for Labor Certification Applications, 69 Fed. Reg. 77326, 77339, 77348 (Dec. 27, 2004) (allowing employers to state wage ranges on notices of filing and in advertisements if the bottoms of the ranges exceed the respective prevailing wage rates). On the Form I-140, Immigrant Petition for Alien Worker, the Petitioner stated the proffered wage as \$65,000 per year.

In determining ability to pay, we examine whether a petitioner paid a beneficiary the full proffered wage each year from a petition's priority date. If a petitioner did not pay a beneficiary the full proffered wage each year, we examine whether it generated sufficient annual amounts of net income or net current assets to pay the difference between any wages paid and the annual proffered wage. If a petitioner's net income or net current assets are insufficient, we may also consider the overall magnitude of its business activities. See *Matter of Sonagawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).<sup>1</sup>

#### A. The Petitioner's Payments to the Beneficiary

The record contains copies of IRS Forms W-2, Wage and Tax Statements, for 2007 and 2008.<sup>2</sup> The Forms W-2 indicate the Petitioner's payments to the Beneficiary of \$69,235.24 in 2007 and \$62,114.16 in 2008.<sup>3</sup>

The amount on the Form W-2 for 2007 exceeds the bottom of the proffered wage range of \$65,000. But the amount on the Form W-2 for 2008 does not equal or exceed \$65,000. The record therefore

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<sup>1</sup> Federal courts have upheld our method of determining a petitioner's ability to pay. See, e.g., *River St. Donuts, LLC v Napolitano*, 558 F.3d 111, 118 (1st Cir. 2009); *Tongatapu Woodcraft Haw., Ltd v. Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984); *Estrada-Hernandez v. Holder*, 108 F. Supp. 3d 936, 942-43 (S.D. Cal. 2015); *Rivzi v. Dep't of Homeland Sec.*, 37 F. Supp. 3d 870, 883-84 (S.D. Tex. 2014), *aff'd*, -- Fed. Appx. --, 2015 WL 5711445, \*1 (5th Cir. Sept. 30, 2015).

<sup>2</sup> The Petitioner states that it must demonstrate its ability to pay the proffered wage from the petition's priority date onward. See 8 C.F.R. § 204.5(g)(2) (requiring a petitioner to demonstrate its ability to pay "at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence"). As indicated in our most recent decision, however, in reviewing the Director's revocation determination, we focus on the Petitioner's ability to pay from only the petition's priority date of June 25, 2007 to its approval date of August 27, 2008. See *Matter of Estime*, 19 I&N Dec. 450, 452 (BIA 1987) (holding that "good and sufficient cause" exists to revoke a petition's approval if the evidence at the time of the revocation decision would have warranted the petition's denial).

<sup>3</sup> In our appellate decision, we mistakenly found that the Petitioner demonstrated its ability to pay the proffered wage based on its payments to the Beneficiary in 2007 and 2008. Upon review, the Form W-2 for 2008 clearly states that the Petitioner paid the Beneficiary less than \$65,000 that year.

does not establish the Petitioner's ability to pay the proffered wage in 2008 based on the wages it paid to the Beneficiary.

The Petitioner's federal income tax returns for 2008 reflect net income of \$13,794. Combining that net income amount with the Petitioner's payment of \$62,114.16 to the Beneficiary, the record indicates that the Petitioner would be able to pay the Beneficiary's individual proffered wage in 2008.

But the record does not demonstrate the Petitioner's ability to pay the combined proffered wages of the instant Beneficiary and the beneficiaries of its other petitions that remained pending after the instant petition's priority date for all relevant years. *See Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (upholding our denial of a petition where the petitioner did not establish its ability to pay the proffered wages of multiple beneficiaries).

On motion, the Petitioner asserts that its payment of the full proffered wage to the Beneficiary relieves it from demonstrating its ability to pay the combined proffered wages of its other pending petitions. The Petitioner cites a May 3, 2013, non-precedent decision of ours, which states that "USCIS will not consider the petitioner's ability to pay additional beneficiaries for each year that the beneficiary of the instant petition was paid the full proffered wage."

Here, however, the record does not establish the Petitioner's payment of the full proffered wage to the Beneficiary in 2008. As previously indicated, the record contains a Form W-2 indicating the Petitioner's payment to the Beneficiary that year of \$62,114.16, less than the annual proffered wage range of \$65,000 to \$84,677.<sup>4</sup> Because the Petitioner did not pay the full proffered wage to the Beneficiary in 2008, it must demonstrate its ability to pay the combined proffered wages of the instant Beneficiary and its other beneficiaries of pending petitions for that year.

As detailed in our most recent decision, because a petitioner must demonstrate its ability to pay the proffered wage of each petition it files pursuant to 8 C.F.R. § 204.5(g)(2), it must demonstrate its ability to pay the combined proffered wages of an instant beneficiary and the beneficiaries of any other petitions that remained pending after an instant petition's priority date. We must consider all of a petitioner's wage obligations in determining whether it can realistically pay a proffered wage. *See Matter of Great Wall*, 16 I&N Dec. 142, 145 (Acting Reg'l Comm'r 1977) (stating that a determination must be made "whether the job offer is realistic and whether the wage offer can be met"). Otherwise, a petitioner with limited amounts of net income and net current assets could unrealistically establish its ability to pay more sponsored foreign workers than it could pay.

In the instant case, USCIS records indicate the Petitioner's filing of at least 39 other I-140 petitions that remained pending after the instant petition's priority date of June 25, 2007 and before the instant petition's approval date of August 27, 2008. The Director's notice of intent to revoke (NOIR) of

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<sup>4</sup> On the Form I-140, Immigrant Petition for Alien Worker, the Petitioner stated the annual proffered wage as \$65,000. The DOL approved the accompanying labor certification with an annual proffered wage range of \$65,000 to \$84,677.

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October 30, 2013 and our notice of intent to dismiss (NOID) of November 13, 2014 afforded the Petitioner opportunities to provide the proffered wages and additional information about its other pending petitions so that we could determine its ability to pay the combined proffered wage amounts.

Based on USCIS records and the Petitioner's responses, the following table lists the receipt numbers of the Petitioner's other pending petitions and their corresponding annual proffered wages.

Petition Receipt Number	Annual Proffered Wage
	Not Provided
	Not Provided
	Not Provided
	Not Provided
	Not Provided
	Not Provided
	Not Provided
	Not Provided
	\$51,709
	\$45,781
	\$45,781
	\$45,781
	Not Provided
	Not Provided
	\$56,014
	\$66,000
	\$45,781
	\$51,709
	Not Provided
	\$51,709
	Not Provided
	\$57,450
	\$57,450
	\$57,450
	\$57,450
	\$51,709
	\$66,000
	\$56,014
	\$45,781
	\$56,016
	\$56,016
	\$57,709
	\$45,781

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	\$48,963
	\$56,014
	\$84,677
	\$84,677
	\$55,000
	\$52,978

As the table shows, the Petitioner did not provide proffered wages for 12 of its 39 other pending petitions. Without the missing proffered wages, the record does not establish the Petitioner's ability to pay the combined proffered wages of all of the applicable petitions.

Even based on the partial proffered wages provided by the Petitioner, the record does not establish the Petitioner's ability to pay the combined proffered wages of its pending petitions. The record indicates the Petitioner's obligation to pay additional proffered wages of at least \$1,508,228 in 2008. The record documents the Petitioner's payment of wages to applicable beneficiaries of only \$122,252.05 in 2008. Thus, after subtracting wages paid, the record indicates that the Petitioner must demonstrate its ability to pay combined proffered wages of at least \$1,385,975.95 in 2008.<sup>5</sup>

The Petitioner's federal income tax returns reflect an annual net income amount of \$13,794 in 2008, and annual net current asset amounts of \$231,195 in 2008.<sup>6</sup> The Petitioner's annual amounts of net income and net current assets do not equal or exceed the combined proffered wage amounts for 2008. Thus, the record does not establish the Petitioner's possession of sufficient net income or net current assets to pay the combined proffered wages in 2008.

Therefore, based on examinations of wages paid by the Petitioner and its annual amounts of net income and net current assets, the record at the time of the petition's approval did not establish its ability to pay the proffered wages of its combined beneficiaries in 2008.

<sup>5</sup> Our appellate decision contained different amounts of combined proffered wages and proffered wages paid for 2008. For purposes of argument in that decision, we used the Petitioner's asserted amounts. But those amounts did not reflect proffered wages of all pending petitions. The Petitioner also attempted to "*pro rate*" some proffered wages without submitting corresponding evidence of net income or wage payments that occurred during the periods after priority dates. We will not consider 12 months of income or payments to demonstrate abilities to pay proffered wages over lesser periods.

<sup>6</sup> The Petitioner files its federal income tax returns as an S corporation. An S corporation with adjustments to its income from sources other than its trade or business reports a reconciled income amount on Schedule K to IRS Form 1120S, U.S. Income Tax Return for an S Corporation. See Internal Revenue Serv., Instructions to Form 1120S, at <http://www.irs.gov/pub/irs-pdf/i1120s.pdf> (accessed Mar. 4, 2016). The instant Petitioner reported adjustments to its income from sources other than its trade or business in 2008. We therefore consider the amount stated on line 18 of Schedule K of the Petitioner's 2008 tax return to reflect its net income amounts for that year.

B. The Totality of the Circumstances

Pursuant to *Sonegawa*, the Petitioner argues that the record otherwise demonstrates its ability to pay the proffered wage.

In *Sonegawa*, the petitioner conducted business for more than 11 consecutive years, routinely earning annual gross incomes of about \$100,000 and employing at least four full-time workers. 12 I&N Dec. at 612, 614. However, in the year of the petition's filing, the petitioner's tax returns did not reflect her ability to pay the proffered wage. *Id.* at 614. During that year, the petitioner relocated her business, causing her to pay rent on two locations for a 5-month period, to incur substantial moving costs, and to briefly suspend her operations. *Id.* Despite these setbacks, the Regional Commissioner found that the petitioner would likely resume successful business operations and had established her ability to pay. *Id.* at 615. The record identified the petitioner as a fashion designer whose work had been featured in national magazines. *Id.* The record indicated that her clients included the then Miss Universe, movie actresses, society matrons, and women included on lists of the best-dressed in California. *Id.* The record also indicated the petitioner's frequent lectures at design and fashion shows throughout the United States and at California colleges and universities. *Id.*

As in *Sonegawa*, we may consider evidence of a petitioner's ability to pay beyond its net income and net current assets. We may consider such factors as: the number of years a petitioner has conducted business; the growth of its business; its number of employees; the occurrence of any uncharacteristic business expenditures or losses; its reputation within its industry; whether a beneficiary will replace a current employee or outsourced service; and other evidence of its ability to pay a proffered wage.

The instant Petitioner asserts that it has continuously conducted business for more than 20 years and that its revenues and earnings have "steadily climbed" since it began operations. It asserts that its clients, who it claims are some of the largest companies in the world, evidence its growth and good reputation in its industry.

Copies of the Petitioner's tax returns from 2005 through 2014 generally support its claim of steady business growth, although the returns indicate that the Petitioner's revenues dipped in 2009 and did not return to prior levels until 2011. The Petitioner attributes the lower annual revenues during that period to the "Global Recession." It provides documentary evidence of payment defaults by some of its clients during that period and of a bankruptcy filing by one client that owed it \$69,600.

However, unlike the petitioner in *Sonegawa*, the instant Petitioner must demonstrate its ability to pay multiple beneficiaries. As previously discussed, despite being afforded multiple opportunities, the Petitioner has not provided the proffered wages of all of its pending petitions. Even the partial information provided by the Petitioner indicates that it did not possess the ability to meet its wage obligations for all of its sponsored workers at the time of the petition's approval.

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Thus, assessing the totality of the circumstances in this individual case pursuant to *Sonegawa*, the record does not establish the Petitioner's ability to pay the proffered wage. We therefore reject the Petitioner's argument.

## II. THE BENEFICIARY'S QUALIFICATIONS

The Petitioner submits additional evidence on motion in support of the Beneficiary's qualifications for the offered position.

A petitioner must establish a beneficiary's possession of all the education, training, and experience specified on an accompanying labor certification by a petition's priority date. 8 C.F.R. §§ 103.2(b)(1), (12); *see also Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

In evaluating a beneficiary's qualifications, we must examine the job offer portion of an accompanying labor certification to determine the minimum requirements of the offered position. We may neither ignore a term of the labor certification, nor impose additional requirements. *See K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1009 (9th Cir. 1983); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc. v. Coomey*, 661 F.2d 1, 3 (1st Cir. 1981).

In the instant case, the accompanying labor certification states the minimum requirements of the offered position of software engineer (jr.) as a Master's degree or a foreign equivalent degree in "CompSc/Rel. Field/Math/Engg/Business Admin/Acctng [Commerce]/Finance/Sc." The Petitioner also indicated that it would accept an alternate combination of education and experience in the form of a bachelor's degree plus 5 years of experience.

Part H.14 of the ETA Form 9089 further states that the "[e]mployer requires a M.S./M.A. (Or Foreign Equiv.) in Computer Science/Related Field/Math/Engineering/Business Administration/Related Field (Accounting [Commerce]/Finance or Science and 0 months experience in the job offered, or alternately, a B.S./B.A. (Or Foreign Equiv.) in any of the above specified majors and 5 years progressive post Baccalaureate experience, including at least 1 year of experience in the Job Offered."

The record indicates the Beneficiary's receipt of three university degrees: a 3-year bachelor's degree in economics from [REDACTED] India, in 1994; a 2-year master's degree in economics from the same university in 1996; and a 2-year master of science degree in information technology from [REDACTED] India, in 2004.

The Petitioner submitted an evaluation of the Beneficiary's foreign educational credentials stating that his master's degree in information technology equated to a U.S. master's degree in computer information systems. In response to our NOID, the Petitioner submitted another evaluation stating that his master's degree in economics equated to a U.S. master's degree in economics.

On motion, the Petitioner submits a third evaluation of the Beneficiary's educational credentials. Similar to the initial evaluation, the most recent evaluation concludes that the Beneficiary's master's degree in information technology equates to a U.S. master of science degree in computer science.

We may treat expert testimony as an advisory opinion. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). But we may reject or afford less weight to expert testimony that is uncorroborated, inconsistent with other information, or questionable in any way. *Id.*; *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (noting that expert testimony may be given different weights depending on the extent of an expert's qualifications, or the relevance, reliability, and probative value of the testimony).

#### A. U.S. Master's Degree Equivalency

As indicated in our NOID, the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), indicates that a 3-year Indian Bachelor's degree followed by a 2-year Indian Master's degree does not equal a U.S. Master's degree. AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher educational admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." *See* AACRAO, <http://www.aacrao.org/About-AACRAO.aspx>. EDGE is "a web-based resource for the evaluation of foreign educational credentials." *See* AACRAO EDGE, <http://edge.aacrao.org/info.php>. Federal courts have found EDGE to be a reliable, peer-reviewed source of information about foreign educational equivalencies.<sup>7</sup>

EDGE reports that a 3-year bachelor's degree from India equates to 3 years of university study in the United States. EDGE also indicates that an Indian master's degree is comparable to a U.S. bachelor's degree.<sup>8</sup>

The most recent evaluation submitted by the Petitioner acknowledges its disagreement with EDGE. The evaluation asserts that a foreign education credential equates to a U.S. master's degree "if the length of study in foreign programs is 5 years or more and the degree received in the foreign

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<sup>7</sup> *See, e.g., Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (finding that USCIS has discretion to discount letters and evaluations that differ from reports in EDGE, which is "a respected source of information"); *Tisco Grp., Inc. v. Napolitano*, No. 09-10072, 2010 WL 3464314, \*4 (E.D. Mich. Aug. 30, 2010) (finding that USCIS properly weighed a petitioner's evaluations and EDGE information in reaching its conclusion regarding the beneficiary's educational qualifications).

<sup>8</sup> Federal courts have affirmed similar findings. *See Tisco Grp., Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314, \*4 (E.D. Mich. Aug. 30, 2010) (holding that a beneficiary did not possess the foreign equivalent of a U.S. master's degree where the record did not explain how his 5 years of study in India equated to a combined 6 years of undergraduate and graduate study in the United States); *see also Sunshine Rehab Servs., Inc. v. USCIS*, No. 09-13605, 2010 WL 3325442, \*\*7-9 (E.D. Mich. Aug. 20, 2010) (finding that a beneficiary with 3 years of foreign university education followed by a 1-year internship did not possess the foreign equivalent of a U.S. bachelor's degree).

program i[s] considered a 'second degree' (a master's degree)." The evaluation states that EDGE's non-acceptance of an Indian master's degree as the equivalent of a U.S. master's degree is inconsistent with its treatment of master's degrees from other British Commonwealth countries.

The evaluation also states that many U.S. universities offer 5-year integrated master's programs or 1-year master's degree programs following a 4-year baccalaureate program. The evaluation states: "Any assertion that a master's degree in the United States always requires two years of coursework to be completed is baseless."

The evaluation states the Beneficiary's completion of the equivalent of about 30 U.S. graduate credits. But the evaluation does not identify the Beneficiary's Indian courses that correspond to those purported U.S. graduate credits, or compare those courses to courses of U.S. universities offering 5-year, integrated master's programs or 1-year master's programs following 4-year baccalaureates.

The record also does not explain why the most recent evaluation identifies the equivalent field of study as computer science, while the initial evaluation stated the equivalent field as computer information systems. The Petitioner must resolve the inconsistency of record with independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

For the foregoing reasons, the record does not establish the Beneficiary's possession of the equivalent of a U.S. master's degree in a field specified on the accompanying labor certification.

#### B. Bachelor's Degree Plus 5 Years of Experience

Based on the conclusion of EDGE, the record indicates the Beneficiary's possession of at least a U.S. bachelor's degree in a relevant field. But, as previously indicated, the accompanying labor certification states the alternate combination of education and experience as the foreign equivalent of a U.S. bachelor's degree followed by 5 years of progressive, post-baccalaureate experience, including at least 1 year of experience in the job offered.

The record indicates the Beneficiary's receipt of a foreign equivalent of a U.S. bachelor's degree in a relevant field in 2004. As discussed in our most recent decision, the record does not establish the Beneficiary's 1996 economics degree as a credential in an acceptable field of study stated on the labor certification. Thus, the record does not establish the Beneficiary's possession of at least 5 years of experience after receipt of a relevant degree in 2004 and before the petition's priority date of June 25, 2007. *See Wing's Tea House*, 16 I&N Dec. at 160 (holding that adjudicators may not consider a beneficiary's education or experience gained after a petition's priority date).

The record therefore does not establish the Beneficiary's possession of a U.S. bachelor's degree or a foreign equivalent degree followed by 5 years of progressive experience by the petition's priority date as specified on the accompanying labor certification.

### III. CONCLUSION

The record at the time of the petition's approval did not establish the Petitioner's ability to pay the proffered wage or the Beneficiary's qualifications for the offered position as stated on the accompanying labor certification. We will therefore affirm our most recent decision and deny the motions to reopen and reconsider.

After careful consideration, the motions will be denied for the above-stated reasons, with each considered an independent and alternate basis of denial. As in visa petition proceedings, a petitioner in visa revocation proceedings must establish its eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361; *Ho*, 19 I&N Dec. at 589.

**ORDER:** The motion to reopen is denied.

**FURTHER ORDER:** The motion to reconsider is denied.

Cite as *Matter of V-I-, Inc.*, ID# 16958 (AAO Aug. 3, 2016)